It also appears from the learned President's grounds of judgment that he thought it was necessary for the evidence of the appellant as to his *alibi* to be corroborated by independent witnesses. Whereas corroboration would, of course, have strengthened the appellant's defence the appellant's statement on oath alone as to where he was at the time the alleged offence was committed was quite sufficient by itself, if he was to be believed. I therefore agreed with the submission on behalf of the appellant that this also was a misdirection in law.

During the cross-examination of the appellant questions were put to him designed to establish the fact that he had been summoned for assault on a previous occasion and that he was a man who assaulted women in public places. These questions were directed against the character of the appellant and were presumably allowed because counsel appearing on behalf of the appellant had cross-examined some of the prosecution witnesses as to their characters. It was submitted on behalf of the appellant that this evidence was irrelevant, prejudicial and inadmissible. With this submission I agreed. The law of evidence as to character in this country is different from that in England. The law here is contained in sections 53 and 54 of the Evidence Ordinance, 1950, and the effect of it is that the fact that an accused person has a bad character is irrelevant unless evidence has been given that he has a good character. Where an accused has not put his character in issue, but has merely attacked the character of the prosecutor in cross-examination, evidence cannot be called by the prosecution to prove that he is a man of bad character (*Sarkar* on Evidence, 10th Edition, page 502). As the appellant had not put his character in issue these questions were irrelevant and were gravely prejudicial to the appellant.

With regard to the facts this was essentially a case where seeing and hearing the witnesses in the witness box was a matter of paramount importance. I do not, therefore, propose to comment upon the grounds of appeal raised on questions of fact, except to say two things. Firstly, a witness should not be disbelieved, where the Police have not asked him for a statement, just because he did not on his own go to the Police and make a statement. The learned President appears to have considered that D.W.5 was not worthy of credit for this reason. Secondly, although it may be that the events took place exactly as described by the prosecution witnesses the prosecution story was nonetheless inherently improbable. In particular the fact that the appellant was well known to the complainant (who had been his mistress) and that, although he was supposed to have put the jewellery into his pocket, upon a search being made a short time afterwards no jewellery was ever discovered on his person or in his house. The learned President does not appear to have given any consideration to the improbabilities in the prosecution story.

In view of the fact that the learned President had misdirected himself in law as to the onus of proof on the appellant in his defence of *alibi* and as to the evidence required to support such a defence, it was not possible for me to say what the effect would have been on the learned President's mind, and consequently on his decision, if he had correctly directed himself in law on these matters. Accordingly I considered that this was a case in which the appeal should be allowed, the conviction and sentence quashed and a retrial ordered.

Retrial ordered.

Solicitors: *Lim, Lim & Oon.*

TAN ENG POH v. REGINA

[A. Cr. J. (Rose C.J.) August 22, 1962]

[Singapore — Magistrate's Appeal No. 88 of 1962]

Criminal Procedure — Sentence — Conviction on alternative charge under Criminal Procedure Code (Cap. 132), s.258 — Consideration of maximum sentences of both offences — Whether proper.

The appellant was charged with stealing a car or in the alternative with receiving a car knowing it to have been stolen. He was convicted in the alternative under section 258 of the Criminal Procedure Code. In passing sentence the learned District Judge considered the sentences that could be imposed on both offences. It was argued on appeal that the learned District Judge should not have done so and that he should have only considered the sentence for the lesser offence as provided by the abovementioned section.

Held: the reasonable inference that could be drawn from the judgment of the learned District Judge was that he passed sentence by taking into consideration the alternative sentences for both offences. This was not the proper test and the sentence should be reduced.

MAGISTRATE'S CRIMINAL APPEAL.

David Marshall for the appellant.

Sachi Saurajen (Deputy Public Prosecutor) for the respondent.

Rose C.J. (delivering oral judgment): This appeal which is only against sentence raises an interesting little point. The appellant was charged apparently with stealing a car or in the alternative with receiving a car knowing it to have been stolen.

The case was contested in the Court below and there is no appeal against the conviction. The learned District Judge sentenced him in the alternative under section 258 of the Criminal Procedure Code, which he is entitled to do.

The point that arises is whether the learned District Judge had in his mind the concluding part of section 258 which provides that if an accused is convicted in the alternative then the relevant punishment is that applying to the smaller of two offences, that is the offence which carries the lower penalty.

Well now, the learned District Judge says quite properly that the theft of a motor car is a serious offence and is punishable under either of

the two sections, under one of which there is a maximum sentence of seven years and under the other a maximum sentence of five years. Having done that, having taken all that into consideration and taking into consideration some previous convictions, he sentenced him to three years' imprisonment.

The point I am now asked to consider is whether the learned District Judge may have thought or may reasonably be inferred to have thought that he should in passing sentence take into consideration the totality of the matter, that is, the two sentences that could be passed and then arrive at some appropriate figure. If he did that I think that would have been a mistake.

Learned Crown Counsel says that I should not infer that he did; I am bound to say, however, that in my opinion the inference which it is reasonable to draw in that passage from the learned District Judge's judgment is that he did think that the proper way to assess the sentence was to take into consideration the two alternative sentences and then arrive at an answer which would appear to consider both.

It is quite true, as Mr. Saurajen says, that if one were deciding this matter *de novo* that one certainly would not say that a sentence of three years' imprisonment was excessive, certainly not manifestly excessive and there are many people who would say it is not excessive at all. But I think in a matter of this kind the proper test is what the learned District Judge himself would have done or can be reasonably inferred to have done, had he applied the right test; and if he had applied the right test I think it would follow that he must inevitably, if his mind was working logically, have imposed some terms of imprisonment of less than three years.

It is difficult, of course, to speculate what exact term he would have fixed upon but I think this is a sort of point that an appellant in a criminal court is entitled to avail himself of and I think that making a guess at it the reasonable thing is to reduce the sentence to one of two years' imprisonment.

I would add a further smaller point that the learned District Judge appears to have taken into consideration, a previous conviction in Johore Bahru. That may have been technically incorrect but I do not think that it affected his mind one way or the other because the matter appears to have been treated by the Magistrate there as a very minor affair, a small fine only having been imposed; and had it not therefore been for the other point with which I have dealt I should not have thought it necessary to alter the sentence in view of that slip on the part of the District Judge.

The appeal is allowed in the sense that the sentence is reduced from one of three years to one of two years' imprisonment, to date from the date of convictions.

Sentence reduced.

KECHIK & ORS. v. HABEEB MOHAMED & ANOR.

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) October 29, 1962]

[Penang — F.M. Civil Appeal No. 24 of 1962]

Landlord and Tenant — Sub-tenancies granted by widow of tenant before grant of letters of administration — Contracts of sub-tenancies for benefit of estate — Administratrix de son tort — Doctrine of relation back on becoming administratrix.

Landlord and Tenant — Deceased a monthly tenant — Whether tenancy terminated by death — Vesting of tenancy on death of tenant — Notice to widow treating her as trespasser — Whether notice to quit.

Landlord and Tenant — Notice to quit on subtenants — Irregular.

Costs — Surplus matter in Record of Appeal — Disallowance.

The first defendant, the widow of a deceased tenant of the premises in dispute granted sub-tenancies of portions of the premises to the second and third defendants in April and June 1958. She applied for letters of administration to her deceased husband's estate and same was granted on December 14, 1958 and extracted on May 18, 1960.

The plaintiffs, on assuming the administration of the deceased owner's estate, found the second and third defendants in occupation of the premises and thereupon instructed their solicitor to send a notice to quit addressed to them. On July 21, 1959 the plaintiffs' solicitor wrote to the 1st defendant demanding a full account of the rents collected by her and treating her as a trespasser. On August 18, 1959 the plaintiff issued a writ claiming possession of the premises.

Held: (1) the 1st defendant in granting the sub-tenancies to the 2nd and 3rd defendants prior to letters of administration being granted or extracted was administering the estate of her deceased husband for the benefit of the said estate. Her appointment as administratrix subsequently related back so as to enable her to grant valid sub-tenancies to the 2nd and 3rd defendants;

(2) the contractual monthly tenancy of the deceased tenant had not been terminated by his death or the letter of July 2, 1959 as it was not a notice to quit.

Cases referred to:—

(1) *Meyappa Chetty* v. *Supramanian Chetty* [1916] 1 A.C. 603, 608.
(2) *Foster* v. *Bates* 12 M. & W. 226 p. 233.
(3) *In the goods of Khoo Chow Sow* 2 Ky. Ecc. 22.
(4) *Egerton* v. *Rutter* [1951] 1 T.L.R. 58, 61.
(5) *Sweeney* v. *Sweeney* (1876) I.R. 10 C.L. 375, 379.
(6) *Rees* v. *Perrott* (1830) 4 C. & P. 230.
(7) *Pleasant, Lessee of Hayton* v. *Benson* (1811) 14 East 234.

COURT OF APPEAL.

S. Thillaimuthu for the appellants/defendants.

Ong Huck Lim for the respondents/plaintiffs.

Cur. Adv. Vult.

Thomson C.J.: The plaintiffs in this case are the administrators of the estate of one K. M. Pitchay who died intestate in India on 30th April, 1958, and who at the time of his death was the owner of premises at No: 111 Pitt Street, Penang.

The first defendant is the widow of one E. K. Ghany who died intestate in Penang on 14th February, 1958. She is also the administratrix of the estate of her deceased husband, but it is to be observed that although she applied